

§1115.3

the Board and be effective at the expiration of the time for filing, unless otherwise provided.

[47 FR 49568, Nov. 1, 1982, as amended at 54 FR 19894, May 9, 1989; 61 FR 52714, Oct. 8, 1996]

§1115.3 Board actions other than initial decisions.

(a) A discretionary appeal of an entire Board action is permitted. Such an appeal should be designated a "petition for reconsideration."

(b) The petition will be granted only upon a showing of one or more of the following points:

(1) The prior action will be affected materially because of new evidence or changed circumstances.

(2) The prior action involves material error.

(c) The petition must state in detail the nature of and reasons for the relief requested. When, in a petition filed under this section, a party seeks an opportunity to introduce evidence, the evidence must be stated briefly and must not appear to be cumulative, and an explanation must be given why it was not previously adduced.

(d) The petition and any reply must not exceed 20 pages in length. A separate preface and summary of argument, not exceeding 3 pages, may accompany petitions and replies and must accompany those that exceed 10 pages in length.

(e) Petitions must be filed within 20 days after the service of the action or within any further period (not to exceed 20 days) as the Board may authorize.

(f) The filing of a petition will not automatically stay the effect of a prior action, but the Board may stay the effect of the action on its own motion or on petition. A petition to stay may be filed in advance of the petition for reconsideration and shall be filed within 10 days of service of the action. No reply need be filed. However, if a party elects to file a reply, it must reach the Board no later than 16 days after service of the action. In all proceedings, the action, if not stayed, will become effective 30 days after it is served, unless the Board provides for the action to become effective at a different date.

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On the day the action is served parties may initiate judicial review.

[61 FR 52714, Oct. 8, 1996, as amended at 61 FR 58491, Nov. 15, 1996]

§1115.4 Petitions to reopen administratively final actions.

A person at any time may file a petition to reopen any administratively final action of the Board pursuant to the requirements of §1115.3 (c) and (d) of this part. A petition to reopen must state in detail the respects in which the proceeding involves material error, new evidence, or substantially changed circumstances and must include a request that the Board make such a determination.

[61 FR 52714, Oct. 8, 1996]

§1115.5 Petitions for other relief.

(a) A party may petition for a stay of an action pending a request for judicial review, for extension of the compliance date, or for modification of the date the terms of the decision take effect. The reasons for the desired relief must be stated in the petition, and the petition must be filed not less than 10 days prior to the date the terms of the action take effect. No reply need be filed. If a party elects to file a reply, the reply must reach the Board no later than 5 days after the petition is filed.

(b) When the terms of a Board action take effect on less than 15 days' notice, a petition for stay pending a request for judicial review must be filed prior to the institution of court action and as close to the service date as practicable. No reply need be filed. Where time permits, a party may elect to file a reply.

(c) A petition or reply must not exceed 10 pages in length.

[47 FR 49568, Nov. 1, 1982, as amended at 61 FR 52714, Oct. 8, 1996]

§1115.6 Exhaustion of remedies and judicial review.

These rules do not relieve the requirement that a party exhaust its administrative remedies before going to court. Any action appealable as of right must be timely appealed. If an appeal, discretionary appeal, or petition seeking reopening is filed under §1115.2 or §1115.3 of this part, before or